

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MARTIN ROSENTHAL
24601 Welby Way
West Hills, CA 91307

Certified Public Accountant License
No. CPA 18610,

Respondent.

OAH NO. L-2003040301

CASE NO. AC-2003-18

DECISION AFTER NONADOPTION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on December 16, 2003.

Deputy Attorney General Ernest Martinez represented complainant.

Respondent, Martin Rosenthal, personally appeared and represented himself.

Oral and documentary evidence was received and the matter was submitted.

The proposed decision of the Administrative Law Judge was submitted to the California Board of Accountancy (hereinafter "Board") on January 12, 2004. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on March 18, 2004 issued an Order of Non-adoption and subsequently issued an Order Fixing Date for Submission of Argument. Written argument having been received from Complainant and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

The Board makes the following Factual Findings:

1. The Accusation was filed by Carol Sigmann ("complainant") while acting in her official capacity as Executive Officer of the California Board of Accountancy, Department of Consumer Affairs ("the board").
2. On March 16, 1973, the Board issued Certified Public Accountant License Number CPA 18610 to Martin Rosenthal ("respondent"). At all relevant times respondent's license was in full force and effect.
3. Respondent began as Mr. and Mrs. L.'s accountant in approximately 1976. As Mr. and Mrs. L.'s accountant respondent completed their annual income tax returns, both State and Federal, and addressed their other accounting needs and questions.
4. Mr. and Mrs. L. suffered a substantial loss as a result of the Northridge earthquake. The losses were deducted on Mr. and Mrs. L.'s 1994 tax return.
5. Sometime just before July 3, 1996, Mr. and Mrs. L. were notified that they were being audited on their 1994 tax return, and that they needed to contact the IRS and arrange an appointment with the IRS before July 31, 1996. Mr. and Mrs. L. immediately contacted respondent and provided him with a copy of the audit notice. Respondent agreed to represent Mr. and Mrs. L. at the audit. In preparation for the audit Mr. and Mrs. L. and respondent completed, and signed a Power of Attorney and Declaration of Representative, which gave respondent authority to represent Mr. and Mrs. L. at the audit. Mr. and Mrs. L. signed that form on July 3, 1996 and respondent signed it on July 8, 1996.
6. An appointment with the IRS was scheduled for August 13, 1996 and respondent, as Mr. and Mrs. L.'s representative, agreed to represent Mr. and Mrs. L. at the meeting, however, respondent failed to attend the meeting. According to respondent, he had car trouble when in route to the meeting and he had his secretary contact the IRS to inform them of the problem. Regardless of the reason for respondent's failure to attend the meeting, he led Mr. and Mrs. L. to believe he attended the meeting. As a consequence of respondent's failure to attend the meeting the IRS failed to receive the documents that respondent and Mr. and Mrs. L. had in their possession substantiating their 1994 tax deductions.
7. Mr. and Mrs. L. thought that respondent had attended the August 13, 1996 meeting with the IRS, had presented the IRS with the substantiating documentation justifying the 1994 deductions and that the matter had been resolved. Then, to their shock and surprise, Mr. and Mrs. L. received a "deficiency notice" from

the IRS dated November 18, 1996 seeking substantial taxes and penalties based on the 1994 tax return. Mr. and Mrs. L. immediately contacted respondent. They told respondent that they could not understand why the deficiency notice was sent since the documentation they provided to substantiate their 1994 deductions was so complete. Respondent told Mrs. L. that he could not understand either, but he would appeal on their behalf. Respondent gave Mrs. L. the impression that he had met with the IRS and that he had given the IRS the documentation.

8. Again, Mr. and Mrs. L. believed respondent had taken care of everything. Then, Mr. and Mrs. L. received a "statement of account" dated May 12, 1997 indicating that Mr. and Mrs. L. owed \$10,630.28 in taxes and penalties based on their 1994 tax filing. Again, Mr. and Mrs. L. notified respondent and again respondent assured them he would take care of everything and that everything would be okay. Then, on June 16, 1997, Mr. and Mrs. L. received an "URGENT" notice from the IRS threatening to "seize your paycheck, bank account, auto, or other property". Mr. and Mrs. L. notified respondent. Respondent told them not to worry as he was taking care of everything. Nonetheless, on July 21, 1997, Mr. and Mrs. L. received a Final Notice from the IRS and, on December 11, 1997 they received a notice from the California State Franchise Tax Board that state income tax was due based on the 1994 tax return. Respondent continued to assure Mr. and Mrs. L. that he was taking care of everything. Eventually, however, the State Franchise Tax Board filed a State Tax Lien on Mr. and Mrs. L.'s real property and the IRS garnished Mr. L.'s salary. Ultimately, Mr. and Mrs. L. paid the state taxes that were claimed to be due and owing, even though they should not have had that tax liability, and through the services of a tax advocate they produced the documents to the IRS that resulted in the IRS accepting the deductions for 1994.

9. Mr. and Mrs. L. suffered health difficulties as a result of the stress caused over the five-year ordeal with the IRS and State Franchise Tax Board. Mr. L. was embarrassed, to say the least, when his employer received the notice that Mr. L.'s wages were to be garnished and Mr. and Mrs. L. were both stressed by the fact that a lien had been filed on their home. None of this should have ever occurred and it would not have occurred if respondent had fulfilled his professional, ethical and even moral obligations to do what he was engaged by Mr. and Mrs. L. to do, and what he continuously promised he was doing; namely, taking care of the situation.

10. Respondent blames the IRS for all the problems, however, respondent's attempts to place the blame on the IRS ring hollow. It is inconceivable that a reasonably prudent accountant in respondent's position would not have been able to resolve the situation with the taxing agencies in a quick and efficient manner. After five years, respondent failed to resolve the matters with the taxing authorities, and he constantly, falsely, reassured Mr. and Mrs. L. that he was taking care of everything and that they should not worry.

11. A Certified Public Accountant, employed as a Board Investigator, gave expert testimony at the hearing. The investigator reviewed all relevant data, including statements given by respondent, under oath, during the Administrative Committee Investigative Hearing. Based on all the relevant information, the Board expert opined that respondent's failure to meet with the IRS on August 13, 1996 and respondent's failure to provide the relevant tax documents to the IRS concerning Mr. and Mrs. L.'s 1994 deductions constituted an extreme departure from the standard of care for accountants; and, respondent's reassurance to Mr. and Mrs. L. that he was taking care of things and everything was okay, was a breach of his fiduciary duty to act in the best interests of his clients and to be honest and truthful with them.

12. Although respondent has no history of other disciplinary actions against his license, and no record of any other complaints against him, respondent engaged in extreme misconduct. Moreover, at the hearing respondent expressed no remorse for subjecting Mr. and Mrs. L. to the stress and trauma they endured for a period of five years due to respondent's failures and his false representations that he was acting in their best interests. In fact, the accusation alleged that respondent's violations were ongoing for a five-year period, at the hearing respondent stated: "but there was no violation...I was trying to take care of the matter." The closest respondent came to expressing any remorse was to say that he "shared [Mr. and Mrs. L.'s] frustrations."

13. As found by the Administrative Law Judge, the reasonable costs of investigation and prosecution of the instant case against respondent are as follows:

- 1) Investigative costs \$5,874.96
- 2) Prosecution costs \$8,231.75

As found by the Administrative Law Judge, the amount of reasonable costs recoverable by the Board totals \$14,106.71.

LEGAL CONCLUSIONS

The Board makes the following Legal Conclusions:

1. Cause exists for discipline of respondent's license pursuant to Business and Professions Code ("Code") section 5100, subdivision (c) because, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, and 11, respondent was grossly negligent during his engagement by Mr. and Mrs. L.
2. Cause exists for discipline of respondent's license pursuant to Code section 5100, subdivision (i) because, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10,

and 11, respondent breached his fiduciary responsibility to his clients who had engaged him as their accountant and tax advocate.

3. As determined by the Administrative Law Judge, the reasonable costs of investigation and prosecution of the instant matter, recoverable by the Board pursuant to Code section 5107, totals \$14,106.71.

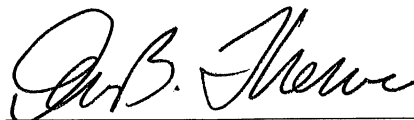
4. As set forth in Finding 12, respondent displayed a cavalier attitude concerning his misrepresentations to Mr. and Mrs. L. Respondent did the two a distinct disservice and caused them actual harm; yet, he is not contrite and he expressed no remorse. Based on the extreme nature of this matter, and notwithstanding the fact that other than the instant case, respondent has no record of other complaints or disciplinary proceedings, the public can only be adequately protected by an order of outright revocation.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified Public Accountant License No. CPA 18610 issued to respondent, Martin Rosenthal, is revoked pursuant to Determination of Issues 1 and 2, separately and for all of them. Respondent shall reimburse the Board the costs of investigation and prosecution in the amount of \$14,106.71.

DATED: July 1, 2004



IAN B. THOMAS

President

California Board of Accountancy

BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the matter of the Accusation
against:

Martin Rosenthal
24061 Welby Way
West Hills, CA 91037

Certified Public Accountant
License No. 18610

Respondent

Case No.: AC-2003-18

OAH No.: L-2003040301

ORDER OF NONADOPTION OF PROPOSED DECISION

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The California Board of Accountancy will decide the case upon record, including the transcript of the hearing held on December 16, 2003, and upon such written argument as the parties may wish to submit. The Board is particularly interested in written argument directed to the question whether the penalty should be increased. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 18th day of March, 2004



Ian B. Thomas
Board President

BEFORE THE
BOARD OF ACCOUNTANCY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MARTIN ROSENTHAL
24601 Welby Way
West Hills, CA 91307

Certified Public Accountant License No. CPA
18610,

Respondent.

OAH NO. L-2003040301

CASE NO. AC-2003-18

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge ("ALJ"), Los Angeles Office of Administrative Hearings, at Los Angeles, California on December 16, 2003.

Deputy Attorney General Ernest Martinez represented complainant.

Respondent, Martin Rosenthal, personally appeared and represented himself.

Oral and documentary evidence was received and the matter was submitted.

FACTUAL FINDINGS

The ALJ makes the following Factual Findings:

1. The Accusation was filed by Carol Sigmann ("complainant") while acting in her official capacity as Executive Officer of the California Board of Accountancy, Department of Consumer Affairs ("the board").
2. On March 16, 1973, the board issued Certified Public Accountant License Number CPA 18610 to Martin Rosenthal ("respondent"). At all relevant times respondent's license was in full force and effect.
3. Respondent began as Mr. and Mrs. L.'s accountant in approximately 1976. As Mr. and Mrs. L.'s accountant respondent completed their annual income tax returns, both State and Federal, and addressed their other accounting needs and questions.

returns, both State and Federal, and addressed their other accounting needs and questions.

4. Mr. and Mrs. L. suffered a substantial loss as a result of the Northridge earthquake. The losses were deducted on Mr. and Mrs. L.'s 1994 tax return.

5. Sometime just before July 3, 1996, Mr. and Mrs. L. were notified that they were being audited on their 1994 tax return, and that they needed to contact the IRS and arrange an appointment with the IRS before July 31, 1996. Mr. and Mrs. L. immediately contacted respondent and provided him with a copy of the audit notice. Respondent agreed to represent Mr. and Mrs. L. at the audit. In preparation for the audit Mr. and Mrs. L. and respondent completed, and signed a Power of Attorney and Declaration of Representative, which gave respondent authority to represent Mr. and Mrs. L. at the audit. Mr. and Mrs. L. signed that form on July 3, 1996 and respondent signed it on July 8, 1996.

6. An appointment with the IRS was scheduled for August 13, 1996 and respondent, as Mr. and Mrs. L.'s representative, agreed to represent Mr. and Mrs. L. at the meeting, however, respondent failed to attend the meeting. According to respondent, he had car trouble when in route to the meeting and he had his secretary contact the IRS to inform them of the problem. Regardless of the reason for respondent's failure to attend the meeting, he led Mr. and Mrs. L. to believe he attended the meeting. As a consequence of respondent's failure to attend the meeting the IRS failed to receive the documents that respondent and Mr. and Mrs. L. had in their possession substantiating their 1994 tax deductions.

7. Mr. and Mrs. L. thought that respondent had attended the August 13, 1996 meeting with the IRS, had presented the IRS with the substantiating documentation justifying the 1994 deductions and that the matter had been resolved. Then, to their shock and surprise, Mr. and Mrs. L. received a "deficiency notice" from the IRS dated November 18, 1996 seeking substantial taxes and penalties based on the 1994 tax return. Mr. and Mrs. L. immediately contacted respondent. They told respondent that they could not understand why the deficiency notice was sent since the documentation they provided to substantiate their 1994 deductions was so complete. Respondent told Mrs. L. that he could not understand either, but he would appeal on their behalf. Respondent gave Mrs. L. the impression that he had met with the IRS and that he had given the IRS the documentation.

8. Again, Mr. and Mrs. L. believed respondent had taken care of everything. Then, Mr. and Mrs. L. received a "statement of account" dated May 12, 1997 indicating that Mr. and Mrs. L. owed \$10,630.28 in taxes and penalties based on their 1994 tax filing. Again, Mr. and Mrs. L. notified respondent and again respondent assured them he would take care of everything and that everything would

be okay. Then, on June 16, 1997, Mr. and Mrs. L. received an "URGENT" notice from the IRS threatening to "seize your paycheck, bank account, auto, or other property". Mr. and Mrs. L. notified respondent. Respondent told them not to worry as he was taking care of everything. Nonetheless, on July 21, 1997, Mr. and Mrs. L. received a Final Notice from the IRS and, on December 11, 1997 they received a notice from the California State Franchise Tax Board that state income tax was due based on the 1994 tax return. Respondent continued to assure Mr. and Mrs. L. that he was taking care of everything. Eventually, however, the State Franchise Tax Board filed a State Tax Lien on Mr. and Mrs. L.'s real property and the IRS garnished Mr. L.'s salary. Ultimately, Mr. and Mrs. L. paid the state taxes that were claimed to be due and owing, even though they should not have had that tax liability, and through the services of a tax advocate they produced the documents to the IRS that resulted in the IRS accepting the deductions for 1994.

9. Mr. and Mrs. L. suffered health difficulties as a result of the stress caused over the five-year ordeal with the IRS and State Franchise Tax Board. Mr. L. was embarrassed, to say the least, when his employer received the notice that Mr. L.'s wages were to be garnished and Mr. and Mrs. L. were both stressed by the fact that a lien had been filed on their home. The travesty to this entire story is that none of this should have ever occurred and it would not have occurred if respondent had fulfilled his professional, ethical and even moral obligations to do what he was engaged by Mr. and Mrs. L. to do, and what he continuously promised he was doing; namely, taking care of the situation.

10. Respondent blames the IRS for all the problems, however, respondent's attempts to place the blame on the IRS ring hollow. It is inconceivable that a reasonably prudent accountant in respondent's position would not have been able to resolve the situation with the taxing agencies in a quick and efficient manner. After five years, respondent failed to resolve the matters with the taxing authorities, and he constantly, falsely, reassured Mr. and Mrs. L. that he was taking care of everything and that they should not worry.

11. A Certified Public Accountant, employed as a board Investigator gave expert testimony at the hearing. The investigator reviewed all relevant data, including statements given by respondent, under oath, during the Administrative Committee Investigative Hearing. Based on all the relevant information, the board expert opined that respondent's failure to meet with the IRS on August 13, 1996 and respondent's failure to provide the relevant tax documents to the IRS concerning Mr. and Mrs. L.'s 1994 deductions constituted an extreme departure from the standard of care for accountants; and, respondent's reassurance to Mr. and Mrs. L. that he was taking care of things and everything was okay, was a breach of his fiduciary duty to act in the best interests of his clients and to be honest and truthful with them.

12. Respondent has no history of other disciplinary actions against his license, and no record of any other complaints against him. Even in view of respondent's otherwise clear record, this case is very troubling. It is troubling because of the extreme nature of the conduct and; because, at the hearing respondent expressed no remorse for subjecting Mr. and Mrs. L. to the stress and trauma they endured for five years due to respondent's failures and his false representations that he was acting in their best interests. In fact, at the hearing respondent stated that although the allegations of the accusation alleged that respondent's violations were ongoing for a five year period: "but there was no violation...I was trying to take care of the matter." The closest respondent came to expressing any remorse was to say that he "shared [Mr. and Mrs. L.'s] frustrations".

13. The reasonable costs of investigation and prosecution of the instant case against respondent are as follows:

- 1) Investigative costs \$5,874.96
- 2) Prosecution costs \$8,231.75

The amount of reasonable costs recoverable by the board totals \$14,106.71.

LEGAL CONCLUSIONS

The Administrative Law Judge makes the following Legal Conclusions:

1. Cause exists for discipline of respondent's license pursuant to Business and Professions Code ("Code") section 5100, subdivision (c) because, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, and 11, respondent was grossly negligent during his engagement by Mr. and Mrs. L.

2. Cause exists for discipline of respondent's license pursuant to Code section 5100, subdivision (i) because, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, and 11, respondent breached his fiduciary responsibility to his clients who had engaged him as their accountant and tax advocate.

3. The reasonable costs of investigation and prosecution of the instant matter, recoverable by the board pursuant to Code section 5107, totals \$14,106.71.

4. As set forth in Finding 12, this is a perplexing case because of respondent's rather cavalier attitude concerning his misrepresentation of Mr. and Mrs. L. Respondent did the two a distinct disservice and caused them actual harm; yet, he is not contrite and he expressed no remorse. Although the ALJ is inclined to order

outright revocation based on the extreme nature of this matter, the ALJ has also considered the fact that other than the instant case, respondent has no record of other complaints or disciplinary proceedings. On balance, the ALJ believes that the public can only be adequately protected by a probationary order designed to: 1) try and find out why respondent acted the way he did over such a protracted period of time; and, to 2) protect the public from anything like this happening again. Accordingly, the probationary order shall have a condition precedent to respondent's resumption of practice, after actual suspension, that he be assessed and found mentally fit to practice. After this occurs, the other terms and conditions will ensure that the public is protected from future lapses in professional competence and judgment.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certified Public Accountant License No. CPA 18610 issued to respondent, Martin Rosenthal, is revoked pursuant to Determination of Issues 1 and 2, separately and for all of them. However, said revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. Respondent's license shall be suspended and respondent shall not engage in activities for which certification as a Certified Public Accountant or Public Accountant is required as described in Business and Professions Code, Division 3, Chapter 1, Section 5051 until notified by the Board of its determination that respondent is mentally fit to practice.

2. Respondent shall take and pass with a score of 90 percent or better a Board approved ethics examination. Said examination must be passed prior to respondent's resumption of practice.

If respondent fails to pass said examination within two attempts, respondent shall so notify the Board.

Notwithstanding any other provision of this probation, failure to take and pass this examination within five years of the effective date of this order constitutes a separate cause for discipline of respondent's license.

3. After fulfilling the conditions precedent to respondent's resumption of practice, as set forth above, The remaining conditions of probation, as set forth below, shall become effective.

4. Respondent shall undergo and continue treatment by a licensed psychotherapist of respondent's choice and approved by the Board or its designee until

the treating psychotherapist certifies in writing in a report to the Board or its designee that treatment is no longer necessary. Respondent shall have the treating psychotherapist submit reports to the Board at intervals determined by the Board or its designee. Respondent is responsible for costs of treatment and reports.

5. Respondent shall obey all federal, California, other states' and local laws, including those rules relating to the practice of public accountancy in California.

6. Respondent shall submit, within 10 days of completion of the quarter, written reports to the Board on a form obtained from the Board. The respondent shall submit, under penalty of perjury, such other written reports, declarations, and verification of actions as are required. These declarations shall contain statements relative to respondent's compliance with all the terms and conditions of probation. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

7. Respondent shall, during the period of probation, appear in person at interviews/meetings as directed by the Board or its designated representatives, provided such notification is accomplished in a timely manner.

8. Respondent shall fully comply with the terms and conditions of the probation imposed by the Board and shall cooperate fully with representatives of the California Board of Accountancy in its monitoring and investigation of the respondent's compliance with probation terms and conditions.

9. Respondent shall be subject to, and shall permit, a practice investigation of the respondent's professional practice. Such a practice investigation shall be conducted by representatives of the Board, provided notification of such review is accomplished in a timely manner.

10. Respondent shall comply with all final orders resulting from citations issued by the California Board of Accountancy.

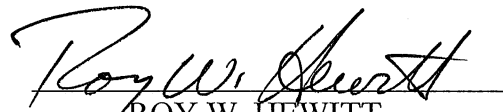
11. In the event respondent should leave California to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return. Periods of non-California residency or practice outside the state shall not apply to reduction of the probationary period, or of any suspension. No obligation imposed herein, including requirements to file written reports, reimburse the Board costs, and make restitution to consumers, shall be suspended or otherwise affected by such periods of out-of-state residency or practice except at the written direction of the Board.

12. Respondent shall reimburse the Board \$14,106.71 for its investigation and prosecution costs. The payment shall be made within 36 months of the date the Board's decision is final.

13. If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. Upon successful completion of probation, respondent's license will be fully restored.

Dated: January 12, 2004.


ROY W. HEWITT

Administrative Law Judge
Office of Administrative Hearings

BILL LOCKYER, Attorney General
of the State of California
ERNEST MARTINEZ, State Bar No. 74752
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2544
Facsimile: (213) 897-2804

Attorneys for Complainant

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2003-18

MARTIN ROSENTHAL
24601 Welby Way
West Hills, CA 91307

A C C U S A T I O N

Certified Public Accountant License No. CPA
18610

Respondent.

Complainant alleges:

PARTIES

1. Carol Sigmann (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

2. On or about March 16, 1973, the California Board of Accountancy issued Certified Public Accountant License Number CPA 18610 to Martin Rosenthal (Respondent). The Certified Public Accountant License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2003, unless renewed.

///

///

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (Board), Department of Consumer Affairs under the authority of the below mentioned statutes and regulations.¹

4. Section 5100 of the Code states, in pertinent part:

"After notice and hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

....

"(c) Dishonesty, fraud, or gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052."

....

"(i) Fiscal dishonesty or breach of fiduciary responsibility of any kind."

5. Section 118, subdivision (b), of the Code provides, in pertinent part, that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 5107 of the Code provides, in pertinent part, that the Board's Executive Officer may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct a respondent found to have committed specified acts of

1. All statutory references are to the Business and Professions Code (Code) unless otherwise indicated.

1 unprofessional conduct to pay to the Board all reasonable costs of investigation and prosecution
2 of the case, including, but not limited to, attorney's fees.

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Gross Negligence)

5 7. Respondent is subject to disciplinary action pursuant to section 5100 of the
6 Code on the grounds of unprofessional conduct as defined in section 5100(c) of the Code in that
7 Respondent was grossly negligent when he failed to exercise due diligence in practicing before
8 the Internal Revenue Service (IRS) as follows:

9 a. For approximately 30 years, Respondent has been the accountant for Mr.
10 and Mrs. L. In June 1996, the IRS audited Mr. and Mrs. L's Schedule C expenses and their
11 casualty losses related to the Northridge earthquake, which were deducted on their 1994 tax
12 return. Respondent agreed to represent Mr. and Mrs. L. in the audit before the IRS and obtained
13 a signed power of attorney from them for that purpose.

14 b. On August 13, 1996, Respondent failed to attend an initial meeting
15 scheduled with the IRS and failed to notify Mr. and Mrs. L of his failure to attend the initial
16 meeting. Respondent failed to present Mr. and Mrs. L's tax documentation to the IRS at any
17 time during the next five years. During this five-year period, the IRS sent information pursuant
18 to the power of attorney to Respondent requesting that he provide Mr. and Mrs. L's supporting
19 documentation. Respondent's failure to respond to the IRS resulted in tax liens and wage
20 garnishments against Mr. and Mrs. L.

21 c. Respondent assured Mr. and Mrs. L. that he was handling the matter even
22 though he had never met the IRS auditor or provided Mr. and Mrs. L's documentation to the IRS.
23 Respondent's failure to provide documentation and respond to the IRS, constitutes gross
24 negligence in performing the tax services for which he was engaged to perform.

25 **SECOND CAUSE FOR DISCIPLINE**

26 (Breach of Fiduciary Responsibility)

27 8. Respondent is subject to disciplinary action pursuant to section 5100 of the
28 Code on the grounds of unprofessional conduct, as defined in section 5100(i) of the Code, in that

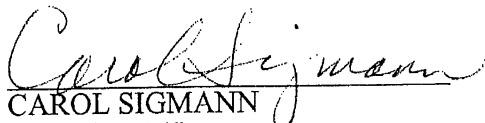
1 Respondent breached his fiduciary responsibility when he failed to perform the tax and audit
2 services for which he was engaged as more specifically stated above in paragraph 7, and upon
3 which engagement Mr. and Mrs. L. reasonably relied to their detriment.

4
5 PRAYER

6 WHEREFORE, Complainant requests that a hearing be held on the matters herein
7 alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 8 1. Revoking, suspending or otherwise imposing discipline on Certified
9 Public Accountant License Number CPA 18610, issued to Martin Rosenthal;
10 2. Ordering Martin Rosenthal to pay the California Board of Accountancy the
11 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
12 Professions Code section 5107;
13 3. Taking such other and further action as deemed necessary and proper.

14
15 DATED: February 20, 2003
16

17 
18 CAROL SIGMANN
19 Executive Officer
20 California Board of Accountancy
21 Department of Consumer Affairs
22 State of California
23 Complainant
24